

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH : KOLKATA

[Before Hon'ble Sri A.T.Varkey, JM & Shri M.Balaganesh, AM]

I.T.A No. 217/Kol/2013

Assessment Year : 2008-09

Sri Pranab Chatterjee
Kolkata
[PAN : ACQPC 3756 K]
(Appellant)

-vs.- A.C.I.T., Circle-30,
Kolkata

(Respondent)

For the Appellant : Shri Soumitra Chowdhury, Advocate

For the Respondent : None

Date of Hearing : 13.06.2017.

Date of Pronouncement : 07.07.2017

ORDER

Per M.Balaganesh, AM

1. This appeal of the assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals) -XIV , Kolkata [in short the Id CITA] in Appeal No. 336/CIT(A)-XIV/10-11 dated 30.11.2012 against the order passed by the A.C.I.T., Circle-30, Kolkata [in short the Id AO] under section 143(3) of the Act dated 31.12.2010 for the Asst Year 2008-09.

2. The Ground No.2 raised by the assessee was stated to be not pressed by the Id AR during the time of hearing and the same is reckoned as a statement from the Bar. Accordingly, the Ground No.1 raised by the assessee is dismissed as not pressed.

3. The first issue to be decided in this appeal is as to whether the Id CITA was justified in upholding the disallowance made on account of cash loss from office amounting to Rs 1,25,000/- in the facts and circumstances of the case.

3.1. The brief facts of this issue is that the assessee is a proprietor of 'M/s Pranab Chatterjee & Associates' engaged in the business of consultants, Architects and Interior Decorator. The assessee is also proprietor of 'Module', engaged in the business of promoting, developing real estate. The assessee is also a partner in partnership firm styled 'M/s Vishwakarma' and also a Karta of HUF. The Id AO observed that the assessee had debited a sum of Rs 1,25,000/- towards cash loss in office in the profit and loss account of 'Module' and claimed the same as deduction. The Id AO observed that the assessee had not submitted any evidence of the cash loss of Rs 1,25,000/- during the office hours. The assessee stated that the same relates to embezzlement of cash from the assessee's office during office hours and for want of proof, he had not filed any First Information Report (FIR) with the Police Authorities. The Id AO observed that the assessee had only made oral submissions without any supporting evidences for the same and accordingly the same was added back to the total income of the assessee. This action of the Id AO was upheld by the Id CITA. Aggrieved, the assessee is in appeal before us on the following ground:-

“ 3. For that on the facts of the case, the Ld. CIT(A) was wrong in confirming the disallowance of cash loss from office amounting to Rs.1,25,000/- which is completely arbitrary, unjustified and illegal.”

3.2. The Id DR was not present when the case was called for hearing and no adjournment petition was preferred by the revenue before us. Hence we proceed to dispose off the appeal after hearing the Id AR. We have heard the Id AR. We find that the assessee has declared turnover including closing stock and miscellaneous income in his proprietary concern 'Module' to the tune of Rs 12,23,02,466/-. We find that the assessee had stated that for want of proof with him for lodging a compliant, no case was registered with the police authorities and internal enquiry conducted proved to be fruitless. We find that the assessee had duly written off the said sum of Rs 1,25,000/- as cash loss in office in his profit and loss account. We are not in agreement with the arguments of the Id AR that no assessee would clearly spell out the expression 'cash

loss in office' and accept the event of embezzlement unless the same had really happened. This is merely an oral submission made by the Id AR but that should be supported by some evidence. We find that no evidence in any manner whatsoever had been furnished by the assessee either before the lower authorities or even before us. Hence we do not find any justifiable reason to interfere with the findings of the Id CITA in this regard. Accordingly the Ground No. 3 raised by the assessee is dismissed.

4. The next issue to be decided in this appeal is as to whether the Id CITA was justified in upholding the disallowance of rehabilitation charges amounting to Rs 12,10,900/- in the facts and circumstances of the case.

4.1. The brief facts of this issue is that the Id AO observed that the assessee had debited a sum of Rs 12,10,900/- in the profit and loss account of 'Module' towards Rehabilitation charges. The Id AO disallowed the same on the ground that the assessee had not submitted any details regarding the same. Before the Id CITA, the assessee filed the details of Rehabilitation charges as additional evidence which were duly remanded back to Id AO calling for a remand report. The Id AO even without verification of the details reiterated the findings made in the assessment order. The assessee submitted that the payments are made from Yes Bank and ICICI Bank and these payments are duly supported by bills and vouchers and in this style of expenditure, this type of expenditure had to be made. It was also submitted that the said expenditure is not capital in nature. It was orally submitted that when the land owners give their land for joint venture, till the construction is completed, those land owners had to be placed in some location for which the charges are to be incurred by the assessee. The said charges are classified in the accounts as 'Rehabilitation Charges', which is incurred in the normal course of business of the assessee. The Id CITA upheld the disallowance made by the Id AO. Aggrieved, the assessee is in appeal before us on the following ground:-

“ 4. For that on the facts of the case, the Ld. CIT(A) was wrong in confirming the disallowance of rehabilitation charges amounting to Rs.12,10,900/- which is completely arbitrary, unjustified and illegal.”

4.2. We have heard the Id AR. The Id AR argued that this type of expenditure was incurred by the assessee in the earlier years as well as in subsequent years, which has been allowed by the Id AO. We find that this expenditure is in the normal course of business as the assessee is also engaged in the real estate business , mostly by entering into joint venture development activity, it is quite usual that the land owners who give their land for development, had to be temporarily placed in some other location and it is quite logical that the said charges are to be borne by the assessee for their temporary shifting of premises. Hence we hold that the said expenditure in the sum of Rs 12,10,900/- is held to wholly and exclusively for the purpose of real estate business (i.e ‘Module’) of the assessee. Accordingly, the Ground No. 4 raised by the assessee is allowed.

5. The next issue to be decided in this appeal is as to whether the Id CITA was justified in confirming the addition of sundry creditors amounting to Rs 1,62,766/- in the facts and circumstances of the case.

5.1. The brief facts of this issue is that the Id AO found that the assessee had not provided the addresses of following sundry creditors :-

Amit Roy	- Rs 50,000/-	
Bimal Das	- Rs 20,000/-	
Saurastra Aluminium	- Rs 92,766/-	
	-----	Rs 1,62,766/-

The Id AO for want of addresses added back the sundry creditors to total income of the assessee. Before the Id CITA, the assessee pleaded that the Id AO purportedly should have only invoked the provisions of section 41(1) of the Act on the ground of remission or cessation of trading liability. The assessee stated that the said liability has not been

written back to income in its books and infact the same had been carried over as liabilities to the subsequent year and those creditors were duly paid by the assessee in the subsequent year. Hence there cannot be any addition u/s 41(1) of the Act. The Id CITA however did not agree with the said contention and upheld the addition made by the Id AO. Aggrieved, the assessee is in appeal before us on the following ground:-

“ 5. For that on the facts of the case, the Ld. CIT(A) was wrong in confirming the addition of sundry creditors amounting to Rs.1,62,766/- without applying section 41(1) of the I.T.Act which is completely arbitrary, unjustified and illegal.”

5.2. We have heard the Id AR. We find that the argument of the Id AR had not been properly appreciated in the right perspective. We find that the Id AO had not even mentioned in the assessment order as to under what provisions of the Act, he is proceeding to make an addition towards sundry creditors in the sum of Rs 1,62,766/-. Just because the addresses of the creditors were not given , the said creditors could not be treated as non-existent. We find that the Id AO had not bothered to verify the claim of subsequent payments. In any case, there is no case made out by the assessee for invoking the provisions of section 41(1) of the Act. First of all, there is no evidence on record to prove that the assessee had claimed deduction in earlier years in respect of these sundry creditors , which is a sine qua non for invoking the provisions of section 41(1) of the Act. Accordingly, the Ground No. 5 raised by the assessee is allowed.

6. The next issue to be decided in this appeal is as to whether the Id CITA was justified in confirming the addition towards carry forward difference in opening capital from proprietary concern in the sum of Rs 5,71,102/- in the facts and circumstances of the case.

6.1. The brief facts of this issue is that the Id AO observed that upto Asst Year 2006-07, the assessee submitted Balance Sheet of the assessee in respect of his only proprietorship concern, namely, M/s Pranab Chatterjee & Associates having closing capital balance of Rs 5,70,806/- and during the Asst Year 2007-08, the assessee submitted Balance Sheet of Module for the first time having opening Capital Balance of

Rs 10,34,400/- and in the Balance Sheet of the Proprietor i.e the assessee, Opening Capital was shown as Rs 99,88,052/-. The Id AO observed that difference in the opening capital of current financial year 2007-08 and closing capital of previous financial year 2006-07 in balance sheets of 'Module' and 'Pranab Chatterjee & Associates'. The Id AO observed that the assessee submitted reconciliation but the still the net difference of Rs 5,71,102/- remained unexplained and accordingly added the same to the total income. This ground was not pressed by the Id CITA by the assessee and accordingly the same was dismissed by the Id CITA. Aggrieved, the assessee is in appeal before us on the following ground:-

“ 6. For that on the facts of the case, the Ld. CIT(A) was wrong in adding carrying forward difference in Opening Capital from Proprietary concern amounting to Rs.5,71,102/- which is completely arbitrary, unjustified and illegal.”

6.2. We have heard the Id AR. We find that the assessee had not pressed this ground before the Id CITA which had been duly recorded in the order of the Id CITA. We find that the assessee had not filed any affidavit retracting the same. Hence we feel that there could be no grievance for the assessee in respect of this addition. Accordingly, we do not deem it fit to interfere with the order of the Id CITA in this regard. Accordingly, the Ground No. 6 raised by the assessee is dismissed.

7. The next issue to be decided in this appeal is as to whether the Id CITA was justified in confirming the addition towards unsecured loans in the sum of Rs 9,50,000/- in the facts and circumstances of the case.

7.1. The brief facts of this issue is that the Id AO observed that the assessee has shown an unsecured loan of Rs 9,50,000/- obtained from relatives but assessee could not explain the inflow of the same. Hence the same was treated as undisclosed income of the assessee and added back to the total income. Before the Id CITA, the assessee furnished the details of unsecured loans received on different dates by cheques drawn on Union Bank of India. It was also stated that the said loan was duly reflected in the Balance Sheet of 'Module' (proprietary concern) wherein it has been clearly reflected as

loan received from relatives. In the remand report, the Id AO reiterated the findings given in the assessment order. Based on this, the Id CITA upheld the addition made by the Id AO. Aggrieved, the assessee is in appeal before us on the following ground:-

“ 7. For that on the facts of the case, the Ld. CIT(A) was wrong in adding unsecured loans amounting to Rs.9,50,000/- which is completely arbitrary, unjustified and illegal.”

7.2. We have heard the Id AR. We find that the assessee had only submitted that the loans were received from his relatives by cheques. But no bank statements were furnished. Even the name of the person from whom the said loans were received were not furnished. Hence the identity of the creditor is not proved. The Id AR merely made an oral submission that the sums were received by the assessee from his father in law. But no evidence was submitted in support of the same. The creditworthiness of the creditor is also not proved. Hence we hold that the ingredients of section 68 of the Act have not been complied with by the assessee. Accordingly, the Ground No. 7 raised by the assessee is dismissed.

8. The last issue to be decided in this appeal is as to whether the Id CITA was justified in upholding the disallowance of interest payment of housing loans amounting to Rs 4,05,620/- in the facts and circumstances of the case.

8.1. The brief facts of this issue is that the assessee had claimed the interest paid on housing loans of Rs 1,50,000/- for self-occupied house and Rs 2,55,620/- for let out property but had not produced any evidence in support of payments made and hence the same was disallowed under the head ‘income from house property’. This action of the Id AO was upheld by the Id CITA. Aggrieved, the assessee is in appeal before us on the following ground:-

“ 8. For that on the facts of the case, the Ld. CIT(A) was wrong in disallowing interest payment of Housing Loans amounting to Rs.4,05,620/-which is completely arbitrary, unjustified and illegal.”

8.2. We have heard the Id AR. We find that the assessee had availed house building loan which is duly reflected in the consolidated balance sheet as at 31.3.2007 itself amounting to Rs 27,88,349/- (enclosed in page 46 of paper book) . The interest is paid only on this housing loan. Moreover, the assessee had actually claimed Rs 1,50,000/- towards interest on housing loan in respect of self occupied property and Rs 2,55,620/- in respect of let out property. This fact has been accepted by the Id AO in his assessment order. The same was disallowed only for want of evidence. But we find that when the house building loan has been reflected in the balance sheet as on 31.3.2007 (i.e the earlier year) then there is no reason to disbelieve the same in the subsequent year. It is not the case of the Id AO that the assessee had discharged the said house building loan. Anyway no addition has been made by the Id AO with regard to this repayment of house building loan. Hence we are not inclined to accept to the findings of the Id AO. When the rental income offered by the assessee has been accepted and taxed as income from house property, there is no reason for denying the benefit of interest payment of housing loan on let out property. We find that the assessee had claimed Rs 1,50,000/- towards interest on housing loan towards self occupied property which is also in accordance with law. Accordingly, the Ground No. 8 raised by the assessee is allowed.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Court on 07.07.2017

Sd/-
[A.T.Varkey]
Judicial Member

Sd/-
[M.Balaganesh]
Accountant Member

Dated : 07.07.2017

[RG PS]

Copy of the order forwarded to:

- 1.Sri Pranab Chatterjee, 240, Lake Road, Kolkata-700029.
2. A.C.I.T., Circle-30, Kolkata. .
- 3..C.I.T.(A)-XIV, Kolkata 4. C.I.T.-X, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches